

NTSB Order No. EA-5198

Issued under delegated authority (49 C.F.R. 800.24)  
on the 22<sup>nd</sup> day of December, 2005

Respondents.

**ORDER DISMISSING APPEAL**

On October 12, 2005, Chief Administrative Law Judge William E. Fowler, Jr., issued an oral initial decision affirming suspensions of respondents' pilot certificates but modifying the periods of suspension from 270 to 180 days for respondent Coudray and 180 to 120 days for respondent Goodman. The Board's Rules of Practice (49 CFR Part 821) require that an appeal from a decision of a law judge be filed within 10 days after the date on which the oral initial decision was rendered.<sup>1</sup> Accordingly, the time

<sup>1</sup> Section 821.47 provides, in part, as follows:

for filing a notice of appeal from the law judge's decision in this case expired on October 24, 2005.<sup>2</sup> Respondents did not file a notice of appeal by this date. Rather, their counsel submitted a motion to file late appeal, postmarked November 3, 2005,<sup>3</sup> asking the Board to accept their late appeal for good cause. In the motion, respondents' counsel, whose office is in Fort Lauderdale, Florida, points out that Hurricane Wilma struck Florida on the morning of October 24, and asserts that because of the resulting damage his office was closed "until today." It is not clear which date "today" refers to. As previously noted, no date appears on the certificate of service, and the handwritten date "November 1, 2005" appears beneath counsel's signature on the motion, but the envelope is postmarked November 3.

The Administrator disputes respondents' counsel's assertion that his office was closed until the day he filed his motion in this case, noting that on October 31, respondents' counsel faxed documents to the FAA in connection with a different enforcement case. (The Administrator attached to her motion copies of these documents, which were sent from respondents' counsel's fax number.<sup>4</sup>) Therefore, the Administrator argues there is no good cause for extending the appeal filing period to November 3. The Administrator further points out that even if respondents' counsel's office was closed for several days as a result of hurricane damage, filing a notice of appeal is a simple task that

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(..continued)

§ 821.47 **Notice of Appeal.**

A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving upon the other parties, a notice of appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served.

<sup>2</sup> October 22 was a Saturday; therefore, in accordance with 49 CFR. 821.10, respondents' notice of appeal was due on the next business day, which was October 24, 2005.

<sup>3</sup> According to 49 CFR 821.7(a)(4), documents are deemed filed on the date of the postmark if there is no mailing date on the certificate of service. A handwritten date of "November 1, 2005" appears on the last page of the motion itself, but no date appears on the certificate of service. Therefore, respondents' motion to accept late appeal is deemed to have been filed on November 3, 2005.

<sup>4</sup> Respondents' counsel has not responded to the Administrator's motion, or taken issue with her assertion that he faxed these documents to the FAA on October 31.

could have been accomplished in a timely manner and that even by a simple phone call could have been sufficient to indicate an appeal was contemplated.

Without good cause to excuse a failure to file a timely notice of appeal, or a timely request to file one out of time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). In this case, good cause has not been shown for respondents' late-filed appeal. While an office closure due to hurricane damage might well constitute good cause for a late filing, it appears to be undisputed that respondents' counsel's office was open and counsel was transacting business with the FAA as of October 31. Accordingly, good cause does not exist for delaying the filing period to November 3.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondents' notice of appeal is dismissed.

Ronald S. Battocchi  
General Counsel